

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-181723

DATE: July 10, 1975

50888

95425

MATTER OF: Graphical Technology Corp.

**DIGEST:**

In view of new facts presented by agency on issue neither raised by any party to original protest nor in any way dispositive of protest, but upon which GAO observation was made, that portion of previous decision is withdrawn.

In our decision Graphical Technology Corporation, B-181723, March 27, 1975, at pages 12-13, in discussing a matter which was not an issue in the protest, we observed that:

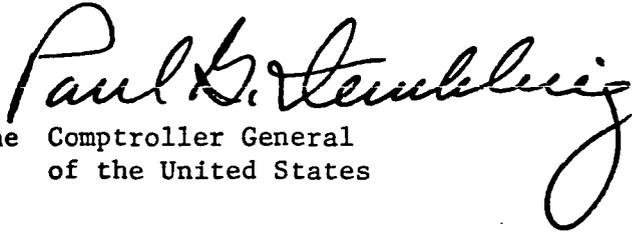
"Although not raised by any party, we wish to point out a deficiency relating to the conduct of negotiations. The proposal of Electronics [Associates, Inc.] was included within the competitive range after the initial technical evaluation. The procuring activity did not hold discussions with that firm because of their extremely high price. However, discussions were held with Hughes and GTC, and the other offerors considered to be in the competitive range, and Electronics was given the opportunity, along with Hughes and GTC, to submit a best and final offer. It appears that a best and final offer was received from Electronics; however, the administrative report states that after receipt of the best and final offers from Hughes and GTC 'it was determined that Electronics was no longer to be considered to have a reasonable chance for an award because of their unusually high price and their proposal was eliminated from the zone of consideration.'

"ASPR § 3-805.1(a) (1974 ed.) provides, except in certain situations not relevant here, that 'Written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive

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range.' Therefore, once Electronics' proposal was determined to be within the competitive range, the procuring activity should have held discussions with that firm before making any further determination with regard to the acceptability of Electronics' proposal, and its failure to do so was in violation of the ASPR provision quoted above. See 50 Comp. Gen. 202, at 205 (1970). We are recommending to the Department of the Army by separate letter of today that this ASPR provision be complied with in the future."

We have subsequently been advised by the Army of a substantial number of additional facts which it feels establish that discussions were held with Electronics and that these discussions were fully in accordance with existing law. In view of these new facts and since the above-quoted portion of our earlier decision was in no way dispositive of the protest, that portion of our previous decision is hereby withdrawn.

  
For the Comptroller General  
of the United States